

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**MISSOURI PRIMATE FOUNDATION,
et al.,**

**Plaintiffs and
Counterclaim Defendants,**

v.

**PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC., et al.,**

**Defendants and
Counterclaim Plaintiffs.**

Case No. 4:16-cv-02163

**COUNTERCLAIM PLAINTIFFS’
MOTION FOR SANCTIONS FOR SPOILIATION OF EVIDENCE**

Counterclaim Plaintiffs, People for the Ethical Treatment of Animals, Inc. and Angela Scott a/k/a Angela G. Cagnasso (together, “Plaintiffs”) hereby move for sanctions for spoliation of evidence against Counterclaim Defendants Missouri Primate Foundation (“MPF”), Connie Braun Casey (“Casey”), and Andrew Sawyer (“Sawyer,” together with MPF and Casey, “Defendants”), and in support state the following:

1. On or before November 12, 2016, Defendants received Plaintiffs’ notice of violation and intent to file suit under the Endangered Species Act, for keeping chimpanzees at MPF’s premises in conditions that constitute an unlawful “take” of these endangered animals. During the mandatory 60-day waiting period between Plaintiffs’ service of the Notice and filing suit, Casey and MPF removed three of the subject chimpanzees to another facility—despite being fully aware of the need to preserve this evidence for the impending litigation.

2. Sometime after receiving the Notice, Sawyer also removed the chimpanzee Joey

from MPF, where Joey had previously been held, and transferred him to an unknown location.

3. On July 18, 2017, Plaintiffs' counsel wrote to (then) counsel for Defendants, reminding him of his clients' duty to preserve evidence and requesting assurances that no other chimpanzees would be removed during the pendency of litigation. Notwithstanding Plaintiffs' explicit warnings and Defendants' counsel's assurances that his clients understood their duty to preserve evidence, one week later, Casey and MPF apparently removed two more chimpanzees from MPF. In all, at least six of the fifteen subject chimpanzees were despoiled since Plaintiffs' Notice.

4. As demonstrated in Plaintiffs' Memorandum, filed concurrently herewith and incorporated by reference hereto, Defendants' spoliation was intentional and in bad faith, and severely prejudiced Plaintiffs' ability to prosecute their claims.

5. Plaintiffs' counsel Jared Goodman and Martina Bernstein conferred by telephone with counsel for Connie Braun Casey, Daniel Batten, at 8:30 a.m. (PT), on May 31, 2018, and with counsel for Andrew Sawyer, Geordie Duckler, at 10 a.m. (PT) on June 1, 2018. Plaintiffs' counsel stated their belief that this motion was not subject to the requirement to confer, but that Plaintiffs' counsel, in an abundance of caution, nevertheless wished to make an earnest effort to attempt to resolve the issues before filing the instant motion. After sincere efforts to resolve their dispute, counsel were unable to reach an accord regarding any or all of the requested relief.

WHEREFORE, Plaintiffs respectfully request that the Court enter an Order, in the form submitted herewith, granting Plaintiffs' motion as follows:

ORDERING that Defendants' Answer to Plaintiffs' Counterclaim [Doc. # 31] be stricken, and default be entered in favor of Plaintiffs and against Defendants on all claims pending before the Court.

ORDERING that Plaintiffs have 14 days from the date of the order granting this motion for sanctions to file a motion for entry of default judgment and proposed order concerning items (a) through (d) of the relief sought in Counts I and II of Plaintiffs' Counterclaim.

ORDERING that Plaintiffs may present their claims pursuant to item (e) of the relief sought in Counts I and II of Plaintiffs' Counterclaim in an appropriate post-judgment motion.

WHEREFORE, IN THE ALTERNATIVE, Plaintiffs respectfully request that the Court grant such alternative and/or further relief as the Court deems proper, including, as follows:

ORDERING that the allegations in Counts I and II of Plaintiffs' Counterclaim be deemed admitted with respect to all chimpanzees that Defendants removed from the Missouri Primate Foundation's premises after November 12, 2016 to the present; and/or

ORDERING that for purposes of trial, there shall be a presumption that the allegations in Counts I and II of Plaintiffs' Counterclaim are true, and that Defendants shall have the burden of rebutting this presumption; and/or

ORDERING Defendants to reimburse Plaintiffs for the costs and fees incurred in connection with obtaining discovery from third parties to whom Defendants transferred any of the chimpanzees that are the subject of Plaintiffs' Counterclaim; and/or

WHEREFORE, IN ADDITION to any other relief ordered by the Court, Plaintiffs also request that the Court enter an order:

GRANTING Plaintiffs an award of costs and attorneys' fees relating to the motion for sanctions, and that Plaintiffs have 14 days from the date of the order granting this motion for sanctions to file a petition detailing these attorneys' fees and costs.

Dated: June 4, 2018

Respectfully submitted,

/s/ Martina Bernstein
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*Attorneys for Defendants/
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CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2018, the foregoing Counterclaim Plaintiffs' Motion for Sanctions for Spoliation of Evidence was electronically filed with the Clerk of the Court using the CM/ECF system, by which notification of such filing was electronically sent and served to the following:

Geordie Duckler, geordied@animallawpractice.com
Attorney for Plaintiff/Counterclaim Defendant Andrew Sawyer

Brian Klar, bklar@lawsaintlouis.com
Daniel T. Batten, dbatten@lawsaintlouis.com
Attorneys for Plaintiff/Counterclaim Defendant Connie Braun Casey

And by regular mail on the following:

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/s/ Jared Goodman